



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/014,727

12/10/2001

David Hedman

871870-6

6900

23879

7590

09/29/2006

BRIAN M BERLINER, ESQ  
O'MELVENY & MYERS, LLP  
400 SOUTH HOPE STREET  
LOS ANGELES, CA 90071-2899

EXAMINER

ROWAN, KURT C

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 09/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/014,727

Applicant(s)

HEDMAN ET AL.

Examiner

Kurt Rowan

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-23, 26-30, 36-40, 42 and 43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-23, 26-30, 36-40, 42-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 18, 2006 has been entered.

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 18-23, 26-30, 36-40, and 42-43 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,327,812. Although the conflicting claims are not identical, they are not patentably distinct from each other because the same method steps are recited

Art Unit: 3643

such as positioning a plurality of temperature probes, providing at least one ingress duct, heating an environmentally acceptable gas, directing the heated gas into the enclosure, monitoring the temperature of the probes, recording the temperatures establishing at least a slight positive pressure within the enclosure and venting the heated gas from the enclosure.

The Terminal Disclaimer filed July 18, 2006 will be processed in due course and applicant will be kept informed of the disposition of the disclaimer.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 18, 20-21, 23, 26-29, 36, 40, and 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forbes '329 in view of Brenner et al. (US 5806238).

The patents to Forbes and Brenner show insect destroying methods and Forbes has been discussed in the first Office Action. In reference to claims 18, 20, and 26, Forbes shows all of the method steps recited such as providing an ingress duct 51, heating a gas by burner 25 to a temperature lethal to a predetermined species as disclosed by Forbes in column 4, lines 22-63. Forbes shows directing the heated gas into the enclosure in Fig. 1 using ingress duct 41. Forbes show extracting heated gas in column 4, lines 8-12. Forbes does not disclose extracting heat killed organisms. The patent to Brenner shows using heat and a vacuum to destroy insects. Brenner who discloses a

Art Unit: 3643

filter system 84 with four filters 86 and a HEPA filter 108. Hence, it would have been obvious to provide Forbes with an extraction step as shown by Brenner who vents and filters the outflow for the purpose of removing dead organisms. In reference to claim 36, Forbes discloses venting through a ventilation duct in column 3, lines 16-17. In reference to claim 37, it would have been obvious to provide the method of Forbes as modified by Brenner with a filter system 84 as disclosed by Brenner to trap organisms killed during the operation of the method recited. In reference to claim 38, it would have been obvious to return filtered air to the interior since Forbes discloses recirculating air in column 2, lines 50-53. In reference to claim 39, Brenner discloses using suction to pull air from an enclosure and it follows that the filter be placed before the suction to ensure proper operation as shown by Brenner. Hence, it would have been obvious to provide the method of killing organisms as shown by Forbes with suction downstream of the filter as shown by Brenner to collect organisms and insects including insect particles in the filter. In reference to claim 40, Forbes discloses heating outside the enclosed structure in Figure 1 noting burner 25. In reference to claim 42, Forbes shows directing heated gas into the interior portion using a duct 51. In reference to claim 43, Forbes discloses heating for about one hour in column 4, line 54.

5. Claims 18, 20, 21, 23, 26-29, 36-40, 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forbes in view of Montellano for substantially the same reasons as stated in the last Office Action.

Art Unit: 3643

The patents to Forbes and Montellano show insect and pest destroying devices and have been discussed in the last Office Action. It would have been obvious in reference to claims 18, 20, 21, 23, 26-29, 36-40, and 42-43 to provide Forbes with a filter screen as shown by Montellano for the purpose of collecting dead insects to assess the effectiveness of the system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kurt Rowan  
Primary Examiner  
Art Unit 3643

KR